

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

OCT 31 2007
OCT. 31, 2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND
and HOWARD McDOUGALL, trustee,

Plaintiffs,

v.

JDS TRUCKING, INCORPORATED,
an Indiana corporation,

Defendant.

07cv6158
JUDGE LEINENWEBER
MAG. JUDGE DENLOW

JH

COMPLAINT

Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and Howard McDougall, one of its trustees, for a cause of action against Defendant JDS Trucking, Incorporated, an Indiana corporation ("JDS"), allege as follows:

JURISDICTION AND VENUE

1. This is an action for collection of withdrawal liability, interest, and penalties incurred by an employer as a result of a partial withdrawal from the Pension Fund.
2. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA") as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §1001, et seq. (1982). This Court has jurisdiction over this action under Sections 502(e), 502(f) and 4301(c) of ERISA, 29 U.S.C. §§ 1132(e), 1132(f), and 1451(c).
3. The Pension Fund is administered at its principal place of business located in Rosemont, Illinois. Venue is proper in this District under Sections 502(e)(2) and 4301(d) of ERISA, 29 U.S.C. §§1132(e)(2) and 1451(d). Venue is also proper in this District under the Pension Fund Trust Agreement.

PARTIES

4. Plaintiff Pension Fund is a multiemployer pension plan within the meaning of Sections 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. §1002(37) and 1301(a)(3), and an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. §1002(3).

5. Plaintiff Howard McDougall is a trustee and fiduciary of the Pension Fund within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A), and he and his fellow trustees are collectively the plan sponsor of the Pension Fund within the meaning of Section 4001(a)(10)(A) of ERISA, 29 U.S.C. §1301(a)(10)(A). The Trustees administer the Pension Fund at 9377 West Higgins Road, Rosemont, Illinois 60018.

6. Pursuant to Sections 502(a)(3) and 4301(a)(1) of ERISA, 29 U.S.C. §§1132(a)(3) and 1451(a)(1), the Trustees, including Plaintiff Howard McDougall, are authorized to bring this action on behalf of the Pension Fund, its participants, and beneficiaries for the purpose of collecting withdrawal liability.

7. Defendant JDS is an Indiana corporation with its principal place of business located in the State of Indiana. Defendant is an "employer" and a "party-in-interest" as those terms are defined by, respectively, Section 3(5) and 3(14)(c) of ERISA, 29 U.S.C. §§1002(5) and 1002(14)(c).

CLAIM FOR RELIEF

8. Defendant JDS is a contributing employer to the Pension Fund and was, at all relevant times hereto, subject to a collective bargaining agreement under which JDS was required to make contributions to the Pension Fund on behalf of certain of its employees.

9. Defendant JDS has experienced a decline in contributions to the Pension Fund thereby effecting a "partial withdrawal" as defined in Sections 4205(a)(1) and 4205(b)(1) of ERISA, 29 U.S.C. §§1385(a)(1), 1385(b)(1).

10. As a result of this partial withdrawal, Defendant JDS incurred withdrawal liability to the Pension Fund in the amount of \$21,817.57 as determined under Section 4201(b) of ERISA, 29 U.S.C. §1381(b).

11. On or about July 20, 2007, Defendant JDS received a notice and demand for payment of withdrawal liability issued by the Pension Fund in accordance with Sections 4202(2) and 4219(b)(1) of ERISA, 29 U.S.C. §§ 1382(2) and 1399(b)(1). The notice and attached invoice notified Defendant that it was required to discharge its liability in a lump sum of \$21,817.57 or in 18 monthly payments of \$1,250.50 beginning August 1, 2007 with a final payment of \$4.74 due on February 1, 2009.

12. On or about August 20, 2007, Defendant JDS received notice from the Pension Fund that its withdrawal liability payments were past due, and which forewarned Defendant of the consequences of its failure to pay such liability pursuant to Section 4219(c)(5)(A) of ERISA, 29 U.S.C. §1399(c)(5)(A).

13. Defendant JDS did not timely initiate arbitration pursuant to Section 4221(a)(1) of ERISA, 29 U.S.C. §1401(a)(1). Consequently, the withdrawal liability amount demanded by the Pension Fund is due and owing pursuant to Section 4221(b)(1) of ERISA, 29 U.S.C. §1401(b)(1).

14. Defendant JDS has failed to make the withdrawal liability payments to the Pension Fund and is in default within the meaning of Section 4219(c)(5) of ERISA, 29 U.S.C. 1399(c)(5).

WHEREFORE, Plaintiffs Central States Southeast and Southwest Areas Pension Fund and Howard McDougall, one of its present Trustees, request the following relief:

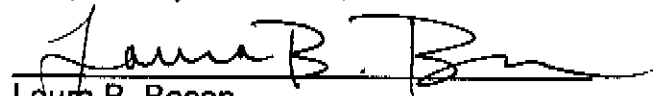
A. A judgment against Defendant JDS, an Indiana corporation and on behalf of Plaintiffs, pursuant to Sections 502(g)(2) and 4301(b) of ERISA, 29 U.S.C. §1132(g)(2) and 1451(b), for:

1. \$21,817.57 in withdrawal liability;
2. interest on the entire amount of the withdrawal liability assessment computed and charged at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth (15th) day of the month for which interest is charged;
3. an amount equal to the greater of the interest on the withdrawal liability or liquidated damages of twenty percent (20%) of the unpaid withdrawal liability; and
4. attorney's fees and costs.

B. Post-judgment interest computed and charged at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth (15th) day of the month for which interest is charged;

C. For such other or different relief as this Court may deem proper and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura B. Bacon", is written over a horizontal line.

Laura B. Bacon
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